

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 9914 of 2004

Between:

- 1 Anil Kumar Agarwal, S/o Sri Omprakash Agarwal,
R/o 10-3-3/14, East Marredpally, Secunderabad.
- 2 Smt. Uma Aggarwal, W/o Sri Anil Kumar Agarwal,
R/o 10-3-3/14, East Marredpally, Secunderabad.

..... PETITIONERS

AND

1. The Debts Recovery Tribunal, "Triveni Complex", 5th Floor, Abids,

Hyderabad rep.by its Presiding Officer.

- 2 Industrial Development Bank of India, 5-9-89/1 & 2, Chapel Road,
Hyderabad.
- 3 IFCI Ltd. Taramandal, 8th Floor, P.B.No.57, Saifabad,
Hyderabad.
- 4 ICICI Bank Ltd. ICICI Towers, Level IV,
1-11-256. Street No.1, Begumpet, Hyderabad-16.
- 5 M/s Kumar Metallurgical Corporation Ltd. 401-405 IV Floor,

Swapnalok Complex, S.D.Road, Secunderabad Now having

Regd.Office & Factory at Vattimarathi Village,
Chityal Mandal, Nalgonda District.

- 6 Sri Satish Kumar Aggarwal, S/o Sri Omprakash Aggarwal,
Plot No.10, Sivarama Krishna Colony, West Marredpally,

Secunderabad, presently residing at Ground Floor,
Sun Rise Apartments, Marredpally, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the orders dated 16-03-2004 of the learned first respondent passed in I.A.No.34 of 2003 in O.A.No.945 of 2001 in so far as recalling the warrants issued to the Receiver on 11-03-2004, as illegal, contrary to law, without jurisdiction and in violation of principles of natural justice and consequently set aside the same and further direct the learned first respondent to proceed forthwith with the order dated 11-03-2004 passed in O.A.No.945 of 2001 in respect of appointment of Receiver already made based on interim directions of Hon'ble Supreme Court of India dated 19-01-2004 made in SLP (Civil) No.260-261 of 2004

Counsel for the Petitioner: MR.K.V.SIMHADRI

Counsel for respondent No.1: None appeared

Counsel for respondent Nos.2 and 3: None appeared

Counsel for respondent No.4: S.Niranjana Reddy

Counsel for the Respondent Nos.5 and 6 : MR.S.RAVI

The Court made the following :

ORDER: (per the Hon'ble the Chief Justice)

The order passed on 16th March, 2004 by the Presiding Officer, Debts Recovery Tribunal, Hyderabad in I.A.No.34 of 2003 is under challenge by the petitioners, primarily on the ground that the order violates principles of natural justice and hence deserves to be set aside.

By the impugned order, the Presiding Officer, Debts Recovery Tribunal recalled the warrant, which had been issued for appointment of receiver.

Facts, in brief, may be stated:

Respondent-banks have filed O.A.No.945 of 2001 before the Debts Recovery Tribunal, Hyderabad for recovery of loan amount together with interest against the fifth respondent company – the borrower – and also against the first petitioner herein, as the guarantor. During the pendency of those proceedings, an order was passed on 8-10-2003 in I.A.No.34 of 2003, by the Tribunal appointing the Industrial and Technical Consultancy Organisation of Tamilnadu as Receiver to assess the profits of the fifth respondent-company without taking over possession of the company. This order was challenged by the fifth respondent-company before the Debts Recovery Appellate Tribunal at Chennai, in M.A.No.171 of 2003. The petitioners were not impleaded as parties to those proceedings. Interim order was obtained by the fifth respondent-company staying the operation of the order of the Debts Recovery Tribunal but the Appellate Tribunal gave direction to the fifth respondent-company to deposit Rs.50 lakhs. Aggrieved by the same, the petitioners approached this court and filed W.P.No.23018 of 2003. It was disposed of with direction to the Debts Recovery Appellate Tribunal to treat the petitioners as necessary and effective parties in the appeal preferred by the fifth respondent-

company. On 24th November, 2003, the Debts Recovery Appellate Tribunal, after hearing the parties, disposed of the appeal of the respondent No.5-company thereby setting aside the order of the Debts Recovery Tribunal dated 8th October, 2003 and issued certain directions against the fifth respondent-company to deposit Rs.40 lakhs.

The fifth respondent-company challenged the order of the Debts Recovery Appellate Tribunal in W.P.No.34938 of 2003 before the High Court of Madras to the extent to which direction had been issued to deposit Rs.40 lakhs. Petitioners as well as respondent-Banks also filed two separate writ petition Nos.25702 and 26451 of 2003 respectively in this court seeking to have the order of the Debts Recovery Appellate Tribunal dated 24th November 2003 set aside. While the writ petitions were pending in this court, the Madras High Court on 29th December, 2003 disposed of the writ petition of the fifth respondent-company thereby modifying the order of the Debts Recovery Appellate Tribunal and directing the fifth respondent-company to deposit Rs.30 lakhs per month on or before 10th of every month. On 9-1-2004, the two writ petitions – of the petitioner and the respondent-banks – were disposed of by this Court by a common order with direction to the Debts Recovery Appellate Tribunal, Chennai to decide M.A.No.171 of 2003 afresh and directed that till the appeal is heard and decided, orders passed by the High Court of Madras on 29-12-2003 shall continue to remain in operation.

Aggrieved by the orders dated 29-12-2003 of the Madras High Court, the fifth respondent-company filed Special Leave Petitions to appeal (Civil) Nos.260 and 261 of 2003 before the Supreme Court. The Supreme Court in the said Special Leave Petitions while issuing notices passed an order of interim measure directing that the order of the Debts Recovery Tribunal dated 8th October 2003 shall operate.

Petitioners, thereafter, approached the Debts Recovery Tribunal and filed memo praying that receiver appointed be directed to proceed with and submit report and date be fixed for trial in respect of the O.A. After notice reply to the memo was filed on 10th March, 2004 by the Respondent-Company and on 11th March, 2004, after hearing the parties, the Debts Recovery Tribunal ordered issuance of warrant to the Receiver.

Substantial development took place thereafter, when, on 15th March 2004 the

Supreme Court permitted the fifth respondent-company to withdraw its SLP Nos.260 and 261 of 2004. On 16th March, 2004, the fifth respondent-company approached the Debts Recovery Tribunal pointing out that the Supreme Court had permitted it to unconditionally withdraw the Special Leave Petitions on 15th March 2004 and that a certificate of registration had been issued by the Board for Industrial and Financial Reconstruction wherein the fifth respondent-company had prayed for being declared as sick industrial company. In that view of the matter, prayer was made before the Debts Recovery Tribunal by the Respondent-Company to recall the warrant in relation to appointment of Commissioner/Receiver. Without notice to any of the affected parties, the Debts Recovery Tribunal proceeded to pass the order impugned in this writ petition on 16th March, 2004. The order reads:

“Memo filed by counsel for D-1 and D-2 stating that there are no orders of the Hon'ble Supreme Court which are pending as the SLP filed by D-1 has been withdrawn. Hence recall Warrant issued as the D-1 is now under BIFR and as further proceedings are barred under SICA, 1985. Call on 1-7-2004, the date on which all the BIFR cases are posted.”

It has also been brought to our notice that the fact that on 16th March, 2004 an order was passed by the Debts Recovery Tribunal was not brought to the notice of the Appellate Tribunal at Chennai by the fifth respondent-company when M.A.No.171 of 2003 came up for consideration before the said Appellate Tribunal. The Appellate Tribunal proceeded to dismiss the appeal, which had been preferred by the fifth respondent-company. The Appellate Tribunal took notice of the fact that the Supreme Court on 19.1.2004 by an interim measure directed that order dated 8th October, 2003 of the Debts Recovery Tribunal shall operate and also noticed the stand of the counsel for the respondent-banks that the order of the Supreme Court had since been carried out by the Debts Recovery Tribunal, which had already issued the warrant. As such, the Appellate Tribunal observed that nothing survived in the appeal, which had been preferred by the fifth respondent-company. The Debts Recovery Appellate Tribunal also noticed the statement made on behalf of the fifth respondent-company that the Special Leave Petitions had been withdrawn. As copy of the orders of the Supreme Court withdrawing the Special Leave Petitions was not filed, the Appellate Tribunal held that since the order of the Supreme Court had to be carried out, nothing survived in the appeal of the fifth respondent-company. The appeal, accordingly, was dismissed. The order reads:

“1. The Hon'ble Supreme Court has passed order in SLP (Civil) Nos.260 and 261 of

2004 dated 19-1-2004 wherein the Supreme Court has ordered as an interim measure that the Order dated 8-10-2003 of the DRT at Hyderabad passed in IA No.34/2003 in OA-945/2001 shall operate.

2. Counsel for the 1st respondent IDBI submits that the Order of the Supreme Court has been carried out by the DRT and the DRT has issued warrant in pursuance of the Order of the Supreme Court dated 19-1-2004. Now that the order has been passed by the Supreme Court and the Order passed by the Supreme Court has to be carried out, nothing survives in this appeal.

3. Counsel for the appellant submits that the SLP has also been withdrawn. He further submits that the appellant has also referred the matter to the BIFR. No order copy passed with regard to the withdrawal of the SLP has been filed. The order passed by the Supreme Court has to be carried out. Nothing survives in this appeal.

4. Appeal dismissed.”

On the basis of the aforementioned narration of facts, learned counsel for the petitioners submitted that since warrant had been issued on the memo filed by the petitioners before the Debts Recovery Tribunal, it was incumbent on the part of the Tribunal, when memo was filed by the fifth respondent-company on 16th March, 2004, to have afforded an opportunity to the petitioners and to the respondent-banks of being heard before proceeding to pass any order on the said memo. Since order has been passed in violation of principles of natural justice, on this ground alone, the said order is liable to be set aside. Mala fides on the part of the fifth respondent-company have been highlighted that the fact that on 16th March, 2004 it had obtained order of recall was not brought to the notice of the Appellate Tribunal.

Learned counsel for the fifth respondent-company vehemently contested the petition on the ground that since the fifth respondent-company has already been registered before the Board for Industrial and Financial Reconstruction, in view of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985, (for short “the SICA”), all legal proceedings before the Debts Recovery Tribunal stand suspended and no proceedings for execution, distress or the like can take place against the fifth respondent-company including appointment of receiver and, therefore, there is no question of setting aside the impugned order even if it had been passed in violation of the principles of natural justice.

We have duly considered the submissions made at the Bar.

There is no manner of doubt that the impugned order dated 16th March, 2004 was passed by the Debts Recovery Tribunal in violation of principles of natural justice and for that reason it would be liable to be set aside. But the question before us is whether such an order be or be not be set-aside now in exercise of our writ jurisdiction when the aforementioned facts have come on record. The effect of setting aside of the said order will, in our considered view, result in enforcement of the warrant issued by the Tribunal appointing receiver. As of to day, we are not concerned with the purpose for which receiver has been appointed. Section 22 of the SICA prohibits continuance of proceedings against the company for which an enquiry under Section 16 of the SICA is pending or scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation. Even, no proceedings for the appointment of receiver can be issued or continued. Setting aside of the impugned order dated 16th March, 2004 will have the effect of bringing into action, the order dated 11th March, 2004, which, in view of Section 22 of SICA is not permissible. In exercise of writ jurisdiction, a Writ Court will not proceed to set aside an order, even if the said order is violative of principles of natural justice, if the effect thereof would be to bring in action, an order, which, as of today, cannot be enforced. As a result of withdrawal of SLP and dismissal of M.A.No.171 of 2003, the resultant position is that the order passed on 8.10.2003 in I.A.No.34 of 2003 by DRT is effective, but, may not be enforceable because of Section 22 of SICA.

The Debts Recovery Tribunal, in our view, ought not to have passed an order without affording an opportunity of hearing to the petitioners and to the affected respondent-banks. It acted in a haste. We have to deprecate such an act on the part of the tribunals in proceeding to pass orders in haste without putting the affected parties to notice. But as of today, irrespective of violation of principles of natural justice, it will not be proper for us to allow the writ petition and set aside the impugned order. Needless to add that the petitioners and the respondent-banks are not remediless. They can definitely approach the Board for Industrial and Financial Reconstruction and seek its leave to proceed against the fifth respondent-company. In these proceedings, we cannot go into the legality and validity of the certificate of registration issued by the Board for Industrial and Financial Reconstruction in

respect of the fifth respondent-company as a sick company and we cannot also enlarge the scope of this petition to take stock of all other factors which were brought to our notice by learned counsel for the parties. We have confined ourselves only on the question as to whether order dated 16th March, 2004 be or be not be set aside.

Accordingly, we dismiss this writ petition with liberty reserved to the petitioners and respondent-banks to approach the Board for Industrial and Financial Reconstruction for appropriate leave, if any.

DEVINDER GUPTA, CJ

3-8-2004

C.V.RAMULU, J

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To

1. The Debts Recovery Tribunal, "Triveni Complex", 5th Floor, Abids,
Hyderabad rep.by its Presiding Officer.

2 Industrial Development Bank of India, 5-9-89/1 & 2, Chapel Road,
Hyderabad.

3 IFCI Ltd. Taramandal, 8th Floor, P.B.No.57, Saifabad,
Hyderabad.

4 ICICI Bank Ltd. ICICI Towers, Level IV, 1-11-256. Street No.1,
Begumpet, Hyderabad-16.

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